

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:05-cv-00329-JOE-SAJ
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

**ANSWER OF WILLOW BROOK FOODS, INC. TO FIRST AMENDED  
COMPLAINT**

Defendant Willow Brook Foods, Inc., (“WBF”), hereby answers Plaintiff’s First Amended Complaint (“Complaint”). WBF denies all allegations not specifically admitted herein and states as follows:

**I. NATURE OF THE CASE**

1. Answering paragraph 1, WBF admits that it contracts with independent farmers, or “growers,” to raise turkeys on farms located within the Illinois River Watershed (“IRW”). The remainder of Paragraph 1 is introductory language to which no response is required. To the extent any response is required, WBF denies the remaining allegations in paragraph 1.

**II. JURISDICTION & VENUE**

2. Answering paragraph 2, WBF admits that Plaintiff purports to bring this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.* (“CERCLA”), the Solid Waste Disposal Act, 42 U.S.C. § 6972 (“SWDA”), and the federal common law of nuisance, but denies that Plaintiff has stated any claim under these laws or theories upon

which relief can be granted. WBF denies all other allegations in paragraph 2, as to WBF. WBF is without knowledge or information sufficient to form a belief as to the truth of any allegations in paragraph 2, as to any other Defendant, and therefore denies the same.

3. WBF denies the allegations in paragraph 3, as to WBF. WBF is without knowledge or information sufficient to form a belief as to the truth of any allegations in paragraph 3, as to any other Defendant, and therefore denies the same.

4. WBF denies the allegations in paragraph 4, as to WBF. WBF is without knowledge or information sufficient to form a belief as to the truth of any allegations in paragraph 4, as to any other Defendant, and therefore denies the same.

### **III. THE PARTIES**

#### **A. Plaintiff**

5. Answering paragraph 5, WBF admits that the State of Oklahoma is a state of the United States. Further answering, WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 5, and therefore denies the same.

#### **B. Poultry Integrator Defendants**

6. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 6, and therefore denies the same.

7. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 7, and therefore denies the same.

8. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 8, and therefore denies the same.

9. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 9, and therefore denies the same.

10. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 10, and therefore denies the same.

11. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 11, and therefore denies the same.

12. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 12, and therefore denies the same.

13. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 13, and therefore denies the same.

14. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 14, and therefore denies the same.

15. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 15, and therefore denies the same.

16. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 16, and therefore denies the same.

17. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 17, and therefore denies the same.

18. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 18, and therefore denies the same.

19. Answering paragraph 19, WBF admits that it is a Missouri corporation with its principal place of business in Missouri. WBF admits that it contracts with

growers to raise turkeys on farms located around the IRW. WBF denies all other allegations in paragraph 19.

20. Answering paragraph 20, WBF admits that in the Complaint, Plaintiff collectively refers to all named Defendants as “Poultry Integrator Defendants.”

21. Answering paragraph 21, WBF admits that, unless otherwise noted, Plaintiff intends to allege each count in the Complaint against all named Defendants.

#### **IV. FACTUAL ALLEGATIONS**

##### **A. The Illinois River Watershed**

22. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 22, and therefore denies the same.

23. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 23, and therefore denies the same.

24. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 24, and therefore denies the same.

25. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 25, and therefore denies the same.

26. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 26, and therefore denies the same.

27. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 27, and therefore denies the same.

28. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 28, and therefore denies the same.

29. WBF denies the allegations in paragraph 29.

30. WBF denies the allegations in paragraph 30.

31. WBF denies the allegations in paragraph 31.

**B. The Poultry Integrator Defendants' Domination and Control of the Actions and Activities of Their Respective Poultry Growers**

32. Answering paragraph 32, WBF admits that WBF is in the business of producing turkey and/or turkey products for sale and use in the United States and internationally. WBF denies the remaining allegations in paragraph 32, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 32 as to any other Defendant, and therefore denies the same.

33. Answering paragraph 33, WBF admits that it is involved in the growth process of its turkeys. WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 33, and therefore denies the same.

34. Answering paragraph 34, WBF admits that it has contracts with independent growers to raise its turkeys within the IRW. WBF denies that it raises any of its turkeys itself within the IRW. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 34 as to any other Defendant, and therefore denies the same.

35. WBF denies all allegations in paragraph 35, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 35 as to any other Defendant, and therefore denies the same.

36. Answering paragraph 36, WBF admits that it contracts with growers to raise turkeys. WBF is without knowledge or sufficient information to form a belief as to

the truth of the allegations in paragraph 36 as to any other Defendant, and therefore denies the same.

37. Answering paragraph 37, WBF admits that under its contracts with growers, it supplies turkeys to growers to raise the turkeys to maturity. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 37 as to any other Defendant, and therefore denies the same.

38. Answering paragraph 38, WBF admits that it owns the turkeys raised by the independent growers with whom it contracts. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 38 as to any other Defendant, and therefore denies the same.

39. Answering paragraph 39, WBF admits that it supplies the feed for the turkeys raised by the growers with whom it contracts. WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 39, as to WBF, or as to the truth of any allegations in paragraph 39 as to any other Defendant, and therefore denies the same.

40. Answering paragraph 40, WBF admits that it contracts with independent growers to raise its turkeys. Further answering, WBF admits that under the terms of these contracts, its growers are independent contractors who agree to provide the labor, utilities, supplies, housing, equipment, and water needed to care for WBF's turkeys. WBD further states that the terms of the contracts speak for themselves. WBF denies all of the remaining allegations in paragraph 40, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 40 as to any other Defendant, and therefore denies the same.

41. Answering paragraph 41, WBF admits that it has made periodic site visits to the operations of independent growers with whom it contracts. WBF denies any remaining allegations in paragraph 41, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 41 as to any other Defendant, and therefore denies the same.

42. Answering paragraph 42, WBF admits that it is involved in the growing process for breeder growing operations in the IRW only pursuant to the terms of its contracts with independent growers. WBF denies the remaining allegations in paragraph 42, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of any allegations in paragraph 42 as to any other Defendant, and therefore denies the same.

43. Paragraph 43 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

44. Paragraph 44 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

45. WBF denies that it owns poultry growing operations within the IRW. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 45 as to any other Defendant, and therefore denies the same. The second sentence of paragraph 45 contains conclusions of law to which no response is required and therefore is denied.

**C. The Poultry Integrator Defendants' Poultry Waste Generation**

46. WBF denies owning any poultry growing operations in the IRW. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 46 as to any other Defendant, and therefore denies the same.

47. Paragraph 47 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

**D. The Poultry Integrator Defendants' Improper Poultry Waste Disposal Practices and Their Impact**

48. WBF denies all allegations in paragraph 48, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 48 as to any other Defendant, and therefore denies the same. WBF further states that Exhibit 2 speaks for itself.

49. WBF denies all allegations in paragraph 49, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 49 as to any other Defendant, and therefore denies the same. WBF further states that Exhibit 3 speaks for itself.

50. WBF denies all allegations in paragraph 50, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 50 as to any other Defendant, and therefore denies the same.

51. WBF denies all allegations in paragraph 51, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 51 as to any other Defendant, and therefore denies the same.



52. WBF denies all allegations in paragraph 52, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 52 as to any other Defendant, and therefore denies the same.

53. WBF denies all allegations in paragraph 53, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 53 as to any other Defendant, and therefore denies the same.

54. WBF denies all allegations in paragraph 54, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 54 as to any other Defendant, and therefore denies the same.

55. WBF denies all allegations in paragraph 55, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 55 as to any other Defendant, and therefore denies the same.

56. WBF denies all allegations in paragraph 56, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 56 as to any other Defendant, and therefore denies the same.

57. WBF denies all allegations in paragraph 57, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 57 as to any other Defendant, and therefore denies the same.

58. WBF denies all allegations in paragraph 58 and its subparts, as to WBF. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 58 and its subparts as to any other Defendant, and therefore denies the same.

59. WBF denies all allegations in paragraph 59.

60. WBF denies all allegations in paragraph 60.

61. The first sentence of paragraph 61 contains conclusions of law to which no response is required and therefore is denied. WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 61, and therefore denies the same. WBF further states that Exhibit 4 speaks for itself.

62. The first sentence of paragraph 62 contains conclusions of law to which no response is required and is therefore denied. WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 62, and therefore denies the same.

63. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 63, and therefore denies the same.

64. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 64, and therefore denies the same.

**E. The Reason for This Lawsuit**

65. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 65, and therefore denies the same.

66. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 66, and therefore denies the same.

67. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 67, and therefore denies the same.

68. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 68, and therefore denies the same.

69. WBF denies all allegations in paragraph 69.

## **V. CAUSES OF ACTION**

### **A. Count 1: CERCLA Cost Recovery – 42 U.S.C. § 9607**

70. Answering paragraph 70, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 69 of the Complaint.

71. Paragraph 71 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

72. Paragraph 72 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph. Answering further, WBF states that the Complaint fails to identify any particular area or land, other than the entire 1,069,530-acre Illinois River Watershed, where hazardous substances allegedly attributable to WBF have been "deposited, stored, disposed of, or placed, or otherwise come to be located," 42 U.S.C. § 9601(9), and therefore WBF has no reasonable basis upon which to answer this allegation.

73. Paragraph 73 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

74. Paragraph 74 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

75. Paragraph 75 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

76. WBF denies all allegations in paragraph 76.

77. Paragraph 77 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

**B. Count 2: CERCLA Natural Resource Damages – 42 U.S.C. §**

**9607**

78. Answering paragraph 78, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 77 of the Complaint.

79. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 79, and therefore denies the same.

80. Paragraph 80 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

81. Paragraph 81 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph. Answering further, WBF states that the Complaint fails to identify any particular area or land, other than the entire 1,069,530-acre Illinois River Watershed, where hazardous substances allegedly attributable to WBF have been "deposited, stored, disposed of, or placed, or otherwise come to be located," 42 U.S.C. § 9601(9) such that WBF has no reasonable basis upon which to answer this allegation, is without knowledge or sufficient information as to form a belief as to the truth of the allegations in paragraph 81 and therefore denies the same.

82. Paragraph 82 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

83. Paragraph 83 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

84. Paragraph 84 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

85. Paragraph 85 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

86. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 86, and therefore denies the same.

87. Paragraph 87 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

88. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 88, and therefore denies the same.

89. Paragraph 89 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

**C. Count 3: SWDA Citizen Suit**

90. Answering paragraph 90, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 89 of the Complaint.

91. Answering paragraph 91, WBF admits only that it received correspondence dated March 9, 2005 as depicted in Exhibit 5. WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 91 as to it or any other Defendant, and therefore denies the same.

92. Paragraph 92 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

93. Paragraph 93 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph .

94. Paragraph 94 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

95. Paragraph 95 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

96. Paragraph 96 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

97. Paragraph 97 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

**D. County 4: State Law Nuisance**

98. Answering paragraph 98, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 97 of the Complaint.

99. Paragraph 99 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

100. Paragraph 100 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

101. Paragraph 101 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

102. Paragraph 102 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

103. Paragraph 103 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

104. Paragraph 104 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

105. Paragraph 105 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

106. Paragraph 106 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

107. Paragraph 107 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

108. Paragraph 108 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

**E. Count 5: Federal Common Law Nuisance**

109. Answering paragraph 109, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 108 of the Complaint.

110. Paragraph 110 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

111. Paragraph 111 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

112. Paragraph 112 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

113. Paragraph 113 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

114. Paragraph 114 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

115. Paragraph 115 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

116. Paragraph 116 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

117. Paragraph 117 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

118. Paragraph 118 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

**F. Count 6: Trespass**

119. Answering paragraph 119, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 118 of the Complaint.

120. Paragraph 120 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

121. Paragraph 121 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

122. Paragraph 122 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

123. Paragraph 123 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

124. Paragraph 124 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

125. Paragraph 125 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

126. Paragraph 126 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

127. Paragraph 127 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.



**G. Count 7: Violation of 27A Okla. Stat. § 2-6-105 & 2 Okla. Stat. § 2-18.1**

128. Answering paragraph 128, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 127 of the Complaint.

129. Paragraph 129 contains conclusions of law to which no response is and therefore WBF denies all allegations in that paragraph.

130. Paragraph 130 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

131. Paragraph 131 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

132. Paragraph 132 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

**H. Count 8: Violation of 2 Okla. Stat. § 10-9-7 and Oklahoma Administrative Code § 35-17-5-5**

133. Answering paragraph 133, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 132 of the Complaint.

134. Paragraph 134 contains conclusions of law to which no response is required, and therefore WBF denies all allegations in that paragraph.

135. Paragraph 135 contains conclusions of law to which no response is required, and therefore WBF denies all allegations in that paragraph.

136. Paragraph 136 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

**I. Count 9: Violation of Oklahoma Administrative Code, § 35-17-3-**

**14**

137. Answering paragraph 137, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 136 of the Complaint.

138. Paragraph 138 contains conclusions of law to which no response is required, and therefore WBF denies all allegations in that paragraph.

139. Paragraph 139 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

**J. Count 10: Unjust Enrichment / Restitution / Disgorgement**

140. Answering paragraph 140, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 139 of the Complaint.

141. Paragraph 141 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

142. Paragraph 142 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

143. Paragraph 143 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

144. Paragraph 144 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

145. Paragraph 145 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

146. Paragraph 146 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

147. Paragraph 147 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

#### **VI. PRAYER FOR RELIEF**

This paragraph of the Complaint contains Plaintiff's request for relief, to which no response is required.

#### **VII. JURY DEMAND**

This paragraph of the Complaint contains Plaintiff's request for a jury trial, to which no response is required.

#### **VIII. AFFIRMATIVE DEFENSES**

1. The Complaint and claims asserted therein fails to state a claim upon which relief can be granted against WBF, and each claim should be dismissed under Fed. R. Civ. P. 12(b)(6).

2. Plaintiff's claim under federal common law is precluded because there is no federal common law that governs the acts or omissions alleged in the Complaint.

3. This Court lacks personal jurisdiction over WBF and the Complaint should be dismissed under Fed. R. Civ. P. 12(b)(2).

4. This Court lacks subject matter jurisdiction over some or all of Plaintiff's claims, including but not limited to Plaintiff's state law claims under 28 U.S.C. § 1367 because the Complaint fails to state a federal law claim upon which relief can be granted.

5. The Complaint should be dismissed for failing to join persons needed for a just adjudication under Fed. R. Civ. P. 19.

6. Some or all of the claims asserted in the Complaint are pre-empted by federal rules, federal regulations, common law, the United States Constitution and

federalism principles inherent in the structure of the United States Constitution, and the federal statutes, including but not limited to the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* ("Clean Water Act").

7. Plaintiff's state common law claims are pre-empted and/or barred by laws and regulations of the State of Oklahoma, including but not limited to the Oklahoma Registered Poultry Feeding Operations Act, OKLA. STAT., tit. 2 § 10-9.1 *et seq.* and the Oklahoma Concentrated Animal Feeding Operations Act, OKLA. STAT., tit. 2 § 9-201 *et seq.*, and the regulations promulgated thereunder.

8. To the extent that WBF's liability is predicated on the claims that independent turkey farmers are the servants, employees or agents of WBF, all such claims are pre-empted by the provisions of the Packers and Stockyards Act, 7 U.S.C. § 181 *et seq.*

9. Neither WBF, its predecessors, nor any companies owned by WBF is a liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

10. WBF is not a successor to any party liable or potentially liable to Plaintiff as to any claim alleged in the Complaint.

11. Plaintiff's claim for "cost recovery" under CERCLA, 42 U.S.C. § 9601, *et seq.*, is barred by the Plaintiff's status as a potentially responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

12. Plaintiffs have failed to identify a "facility" at which releases of "hazardous substances" have occurred for which WBF is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

13. WBF is not subject to liability under the Solid Waste Disposal Act (“RCRA”), 42 U.S.C. § 6972 because WBF is not an “owner” or “operator” of any “facility”, nor is it a “generator” or “transporter” of “solid waste” and/or “hazardous waste” as those terms are defined therein.

14. Plaintiff lacks standing to pursue claims under the citizen suit provisions of the RCRA.

15. Some of Plaintiff’s claims are barred because Plaintiff did not provide adequate pre-suit notice as required by 42 U.S.C. § 6972(a)(1)(B), (b)(2)(A), and 40 C.F.R. § 254.3.

16. Plaintiff’s claims, in whole or in part, are not actionable under 42 U.S.C. § 6972(b)(2)(c)(ii) and/or (iii).

17. Plaintiff’s RCRA claim is precluded by the Clean Water Act.

18. Plaintiff’s RCRA claim is barred because poultry litter used as fertilizer does not constitute “solid waste” under the RCRA.

19. Plaintiff’s CERCLA and RCRA claims are barred by the exemptions and exclusions contained in those statutes.

20. Plaintiff’s claims, in whole or in part, are barred because they are premised on statutes or regulations that are unconstitutionally void for vagueness or which otherwise violate due process.

21. Plaintiff is not the real party in interest as to some or all of the claims and damages asserted in the Complaint.

22. Each claim asserted in the Complaint should be dismissed because Plaintiff failed to exhaust its administrative remedies.

23. Each claim asserted in the Complaint is barred by the applicable statutes of limitations, including but not limited to 42 U.S.C. § 9613(g)(2).

24. An award of punitive damages is prohibited by the Constitution of the United States and the Constitution of Oklahoma.

25. Each of Plaintiff's claims is barred by the equitable doctrines of laches, unclean hands, and in pari delicto.

26. Each of the Plaintiff's claims is barred by the equitable doctrines of estoppel and waiver.

27. Plaintiff's claims, in whole or in part, are barred because Plaintiff failed to mitigate its alleged damages.

28. Plaintiff's claims, in whole or in part, are barred under the doctrines of comparative or contributory fault and/or negligence because Plaintiff's acts or omissions caused or contributed to cause the damages alleged in the Complaint.

29. Plaintiff lacks standing to assert some or all of the claims in the Complaint, including but not limited to Plaintiff's request for damages or injunctive relief with respect to "natural resources" owned or held in trust for Indian Tribes.

30. Some or all of Plaintiff's claims present a political question and, therefore are not amenable to judicial resolution.

31. Some or all of Plaintiff's claims against WBF are barred by the primary jurisdiction doctrine and the authority of the Oklahoma Department of Environmental Quality, the Oklahoma Department of Agriculture, Food and Forestry, and other Oklahoma state agencies.

32. The costs and damages averred by Plaintiff in the Complaint are unnecessary and/or inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

33. WBF has not joined all party/parties at fault for their alleged injuries. WBF reserves its right at trial to seek an allocation of fault to, and contribution from, such party/parties.

34. To the extent Plaintiff has sustained any damages, such damages were caused by the acts and/or omissions of third parties over whom WBF has no control or right of control and for whose conduct WBF is not responsible.

35. Plaintiff is not entitled to recover costs of prosecuting this action or attorneys' fees that it has incurred or may incur in the future.

36. Plaintiff is not entitled to recover the damages sought.

37. Upon information and belief, at all times relevant, WBF and the growers with whom WBF contracted to raise turkeys were in compliance with all environmental, health and safety statutes and obtained all necessary permits.

38. WBF reserves its right to assert further affirmative defenses which are subsequently revealed during discovery or that are otherwise determined to be appropriate.

39. WBF adopts and asserts any affirmative defenses raised or asserted by other Defendants to this action that are also applicable to WBF.

WHEREFORE, WBF prays for relief as follows:

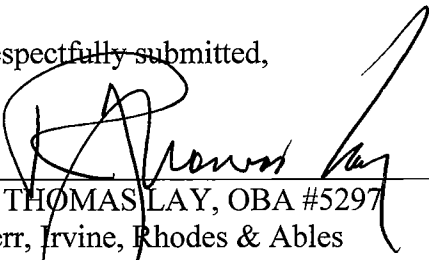
1. That the Complaint be dismissed with prejudice and Plaintiff be awarded nothing thereby;

2. For costs of suit herein;

3. For its attorneys' fees and expenses; and
4. For such other and further relief as the Court deems just and proper.



Respectfully submitted,



R. THOMAS LAY, OBA #5297  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of October, 2005, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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